

AMENDED IN SENATE MARCH 15, 2012

**SENATE BILL**

**No. 1069**

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**Introduced by Senator Corbett**

February 13, 2012

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An act to amend Section 580b of the Code of Civil Procedure, relating to deficiency judgments.

LEGISLATIVE COUNSEL'S DIGEST

SB 1069, as amended, Corbett. Deficiency judgments.

Existing law provides that no deficiency judgment shall lie following a judicial foreclosure with respect to, among other things, a deed of trust or mortgage given to the vendor to secure payment of the balance of the purchase price of real property, or under a deed of trust or mortgage on a dwelling to secure repayment of a purchase money loan which was in fact used to pay all or part of the purchase price of that dwelling.

~~This bill would additionally provide, as defined, that a purchase money loan does not lose that status and the protection from deficiency liability, if, among other things, it is renewed, refinanced, consolidated, restructured, modified, assigned, or assumed on or after January 1, 2013. The bill would also provide, however, that the protection from deficiency liability for a purchase money obligation extends only to the outstanding amount of the purchase money obligation, and that the obligor has the burden of establishing that amount, as specified. The bill would provide that a deficiency judgment may lie in certain circumstances where a vendor has subordinated its loan to a construction loan for a commercial project, the construction loan has funded a substantial portion of the project, and the construction lender has~~

~~foreclosed on the property, extinguishing all or part of the vendor's subordinated lien.~~

~~The bill would state the intent of the Legislature in amending these provisions to codify the holding in Spangler v. Memler (1972) 7 Cal.3d 603, as construed by DeBerard Properties, Inc. v. Lim (1999) 20 Cal.4th 659.~~

*This bill would additionally provide that no deficiency judgment shall lie in any event on any loan, refinance, or other credit transaction that is used to refinance a purchase money loan, as defined, or subsequent refinances of a purchase money loan, except to the extent that the lender or creditor advances new principal which is not applied to any obligation owed or to be owed under the purchase money loan, or to fees, costs, or related expenses of the refinance. The bill would provide, for purposes of these provisions, that any payment of principal for a refinanced purchase money loan would be deemed to be applied first to the principal balance of the purchase money loan, and then to the remaining principal balance, as specified. The bill's provisions would apply to a loan, refinance, or other credit transaction used to refinance a purchase money loan which is executed on or after January 1, 2013.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 580b of the Code of Civil Procedure is  
2     amended to read:  
3     580b. (a) No deficiency judgment shall lie in any event ~~after~~  
4     ~~(1) for the following:~~  
5         (1) *After a sale of real property or an estate for years therein for*  
6     *failure of the purchaser to complete his or her contract of sale, or*  
7     ~~(2) except as provided in subdivision (c), under sale.~~  
8         (2) *Under a deed of trust or mortgage given to the vendor to*  
9     *secure payment of the balance of the purchase price of that real*  
10    *property or estate for years therein, or (3) under a purchase money*  
11    *obligation.*  
12         (3) *Under a deed of trust or mortgage on a dwelling for not*  
13    *more than four families given to a lender to secure repayment of*  
14    *a loan which was in fact used to pay all or part of the purchase*  
15    *price of that dwelling, occupied entirely or in part by the*  
16    *purchaser.*

1 (b) For purposes of subdivision (c), a loan described in  
2 paragraph (3) of subdivision (a) is a “purchase money loan.”

3 (c) No deficiency judgment shall lie in any event on any loan,  
4 refinance, or other credit transaction (collectively, a “credit  
5 transaction”) which is used to refinance a purchase money loan,  
6 or subsequent refinances of a purchase money loan, except to the  
7 extent that in a credit transaction, the lender or creditor advances  
8 new principal (hereafter “new advance”) which is not applied to  
9 any obligation owed or to be owed under the purchase money loan,  
10 or to fees, costs, or related expenses of the credit transaction. Any  
11 new credit transaction shall be deemed to be a purchase money  
12 loan except as to the principal amount of any new advance. For  
13 purposes of this section, any payment of principal shall be deemed  
14 to be applied first to the principal balance of the purchase money  
15 loan, and then to the principal balance of any new advance, and  
16 interest payments shall be applied to any interest due and owing.  
17 The provisions of this subdivision shall only apply to credit  
18 transactions that are executed on or after January 1, 2013.

19 ~~(b) A purchase money obligation does not lose its status as such~~  
20 ~~in any of the following circumstances:~~

21 ~~(1) The collateral securing the purchase money obligation also~~  
22 ~~secures an obligation that is not a purchase money obligation.~~

23 ~~(2) The purchase money obligation has been renewed,~~  
24 ~~refinanced, consolidated, restructured, modified, assigned, or~~  
25 ~~assumed on or after January 1, 2013.~~

26 ~~(c) The protection against deficiency liability provided by this~~  
27 ~~section with respect to a purchase money obligation extends only~~  
28 ~~to the amount of the purchase money obligation remaining~~  
29 ~~outstanding against a qualified dwelling. An obligor seeking that~~  
30 ~~protection has the burden of establishing the amount of the~~  
31 ~~purchase money obligation remaining outstanding against a~~  
32 ~~qualified dwelling. Any payments that have been applied to the~~  
33 ~~principal balance due on any loan for which that protection is~~  
34 ~~sought shall be deemed to first have reduced the outstanding~~  
35 ~~principal balance of the obligor’s purchase money obligation, and~~  
36 ~~then to have reduced the remaining outstanding principal balance~~  
37 ~~of the loan.~~

38 ~~(d) For purposes of this section, a “purchase money obligation”~~  
39 ~~means an obligation secured by a deed of trust or mortgage on a~~  
40 ~~qualified dwelling. For purposes of this section, a “qualified~~

dwelling” means a dwelling for not more than four families as to which a deed of trust or mortgage has been given to a lender to secure repayment of a loan which was in fact used to pay all or part of the purchase price of that dwelling occupied, entirely or in part, by the purchaser. A loan that is used to refinance a purchase money obligation is a purchase money obligation for all amounts used to reduce or discharge the then-outstanding principal of the original purchase money loan or a subsequent purchase money loan, so long as the loan is secured by the qualified dwelling.

(e) A deficiency judgment may lie if all of the following occur:

(1) The vendor has contractually subordinated his or her lien to the lien of a construction lender.

(2) The construction loan involves a commercial project that contemplates a material change in the use of the real property, or a material increase in intensity of the existing use of the real property.

(3) The construction lender has funded a substantial portion of the project.

(4) The construction lender has foreclosed on the property, extinguishing all or part of the lien held by the vendor.

(f)

(d) Where both a chattel mortgage and a deed of trust or mortgage have been given to secure payment of the balance of the combined purchase price of both real and personal property, no deficiency judgment shall lie at any time under any one thereof if no deficiency judgment would lie under the deed of trust or mortgage on the real property or estate for years therein.

SEC. 2. It is the intent of the Legislature in amending Section 580b of the Code of Civil Procedure in this act to codify the holding in *Spangler v. Memler* (1972) 7 Cal.3d 603, as construed by *DeBerard Properties, Inc. v. Lim* (1999) 20 Cal.4th 659.